





**MARATHON FUELS SERVICE**  
A SUBSIDIARY OF SHORESIDE FUM, INC.

EUM, INC.

P.O. BOX 229 - SEWARD, ALASKA 99664-0229

PHONE (907) 224-3171 - FAX (907) 224-3060

**TEXACO PETROLEUM PRODUCTS, RACOR & FRAM FILTERS**

Spencer Rock

No. 023192

DATE:

6-25-97

**SOLD TO:**

**CASH**

## CHARGE

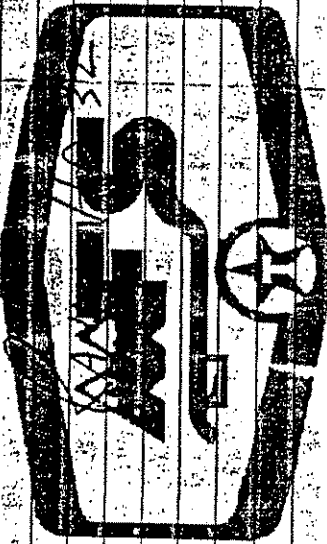
DELIVERED

**CHECK**

CREDIT CARD

**P.O. NO.**

**CUSTOMER NO.**



PACKAGES	NO.	KIND
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UNIT PRICE

AMOUNT

**SIGNATURE**

ALL ACCOUNTS PAYABLE ON 10th OF MONTH FOLLOWING DATE OF PURCHASE. PAST DUE ACCOUNTS ARE SUBJECT TO 1 1/2% PER MONTH INTEREST ON THE UNPAID BALANCE.

ALL PRODUCT SAFETY DATA SHEETS AVAILABLE

SUB TOTAL

**SALES TAX**

**INVOICE**

5

27

17

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NUGGET 009151



**MARATHON FUEL SERVICE**  
A SUBSIDIARY OF SHORESIDE PETROLEUM, INC.

**A SUBSIDIARY OF SHORESIDE PE**

P.O. BOX 229 - SEWARD, ALASKA 99664-0229

**PHONE (907) 224-3171 - FAX (907) 224-3060**


**TEXACO PETROLEUM PRODUCTS, RACOR & FRAM FILTERS**

**SOLD TO:**

Spencer & Rock

**CASH**

☒ CHARGE



**CREDIT**

**ЧЕХИ**

100

**CARD**

**P.O. NO.**

**CUSTOMER NO.**



**SIGNATURE**

ALL ACCOUNTS PAYABLE ON 10th OF MONTH FOLLOWING DATE OF PURCHASE. PAST DUE ACCOUNTS ARE SUBJECT TO 1 1/2% PER MONTH INTEREST ON THE UNPAID BALANCE.

**ALL PRODUCT SAFETY DATA SHEETS AVAILABLE**

**SUB TOTAL**

SALES TAX

**INVOICE**

1

.....

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NUGGET 009152

Steven J. Shamburek  
Alaska Bar No. 8606063  
FARLEIGH & SHAMBUREK  
601 West Fifth Avenue, Suite 810  
Anchorage, Alaska 99501  
(907) 274-6641  
(907) 272-6875 FAX

Attorneys for Plaintiff  
Shoreside Petroleum, Inc.,  
d/b/a Marathon Fuel Service

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA for the  
use of SHORESIDE PETROLEUM, INC.,  
d/b/a Marathon Fuel Service, and  
SHORESIDE PETROLEUM, INC., d/b/a  
Marathon Fuel Service, on its own  
behalf,

Plaintiffs,

Case No. A98-009 CV (HRH)

vs.

NUGGET CONSTRUCTION, INC.; SPENCER  
ROCK PRODUCTS, INC.; UNITED STATES  
FIDELITY AND GUARANTY COMPANY; and  
ROBERT A. LAPORE,

Defendants.

AFFIDAVIT OF DOUG LECHNER

STATE OF ALASKA )  
THIRD JUDICIAL DISTRICT ) ss.

DOUG LECHNER, being first duly sworn, deposes and states as  
follows:

Affidavit of Doug Lechner  
Page 1

Ex. 4 Date 12-2-05  
Witness Lechner  
S. WARNICK 907-258-7100

EXHIBIT 1  
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Exhibit 1  
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LAW OFFICES OF  
FARLEIGH & SHAMBUREK  
SUITE 810  
601 WEST FIFTH AVENUE  
ANCHORAGE, ALASKA 99501-2253  
(907) 274-6641

1. I am the Vice President of Marketing for Shoreside Petroleum, Inc., d/b/a Marathon Fuel Service.

2. Shoreside Petroleum, Inc. through its affiliate company Marathon Fuel Service commenced supplying Spencer Rock's fuel and lubricants for its quarry at Spencer Pit and also for its unloading operations in Seward during early spring of 1997.

3. In June, 1997, I received a phone call from Randy Randolph, the head project engineer/coordinator for Nugget Construction's Homer Armor Rock project.

4. Mr. Randolph told me that Nugget Construction was taking over for Spencer Rock and that all future fuel and lube purchases were to be billed directly to Nugget Construction.

5. I told him that Spencer Rock owed Shoreside Petroleum, Inc., d/b/a Marathon Fuel Service for past purchases and that Shoreside Petroleum, Inc., d/b/a Marathon Fuel Service sought payment from Spencer Rock or Nugget Construction.

6. Mr. Randolph stated that Nugget Construction would not pay for past purchases by Spencer Rock and that Spencer Rock would have to pay for those purchases.

7. We continued fueling the equipment as requested by Nugget Construction and billed all invoices to Nugget Construction's account.

8. At the very beginning of this project and prior to that, I had several conversations with Randy Randolph on behalf of Spencer Rock.

Affidavit of Doug Lechner  
Page 2

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9. He was looking for quotations on fuel and other items pertaining to the very same job that Spencer Rock was doing.

10. It was somewhat unclear as to exactly what his relationship was to Spencer Rock and I was led to believe that he was personally and financially involved with Spencer Rock.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

  
DOUG LECHNER

SUBSCRIBED AND SWORN to before me this 30<sup>th</sup> day of July, 1998.

  
NOTARY PUBLIC in and for Alaska  
My Commission Expires: 12 18 2000

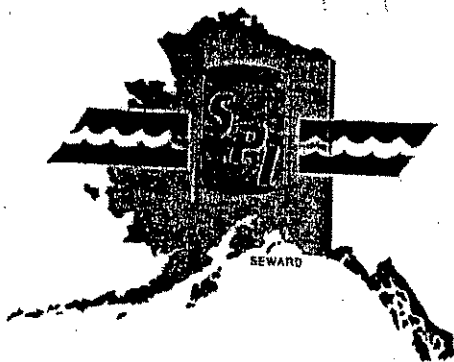
LAW OFFICES OF  
FARLEIGH A SHAMBUREK  
SUITE 810  
801 WEST FIFTH AVENUE  
ANCHORAGE, ALASKA 99501-2263  
(907) 274-6841

Affidavit of Doug Lechner  
Page 3

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Exhibit 1  
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## **SHORESIDE PETROLEUM, INC.**

CORPORATE OFFICE  
P.O. BOX 1189 700 PORT AVENUE  
SEWARD, ALASKA 99664-1189  
PHONE (907) 224-8040 FAX (907) 224-8047

August 28, 1997

Mr. Doug Wood  
US. Army Corp of Engineers  
Richardson Residence office  
Box 898  
Anchorage, Ak. 99506-0898

Re: Homer Spit repair & extension project # DACW 85-96-0020

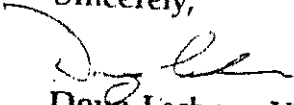
Dear Doug,

The following is a synopsis of our phone conversation regarding nonpayment of invoices from a subcontractor on the Homer spit extension & repair.

Nugget Construction is currently under contract to the Corp. of Engineers to supply rock for the Homer Spit project. One of their subcontractors, Spencer Rock, is in arrears to our company, Marathon Fuel, which is a wholly owned subsidiary of Shoreside Petroleum, Inc., for \$ 53,062.93 (statement is attached). As you can see on the statement, they are 5 months past due and to this date, we have not recieved any payment since March. It is our understanding that this is a bonded job and that the General Contractor, Nugget Construction, is responsible to ensure that all 2nd tier contractors, such as Spencer Rock, are paying their suppliers for all work performed under this contract. We would appreciate notification (or whatever is customary in this situation) to the general contractor informing them of this non payment of goods recieved.

We look forward to resolving this matter as quickly and efficiently as possible. If you need more information or have any questions, please feel free to call me anytime at 224-3171 (direct). Thank you for your assistance!

Sincerely,

  
Doug Lechner, VP/Marketing  
Shoreside Petroleum, Inc.

enclosures

EXHIBIT 1  
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Exhibit 1  
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**NUGGET  
CONSTRUCTION, INC.**

8726 Corbin Drive  
Anchorage, Alaska 99507  
(907) 344-8365  
Fax (907) 522-2786  
e mail nci@alaska.net

September 19, 1997

Mr. Doug Lechner  
Vice President/Marketing  
Shoreside Petroleum, Inc.  
P.O. Box 1189  
Seward, Alaska 99664-1189

RE: Homer Spit Repair and Extension Project

RECEIVED:	SEP 22 1997
EXCEPTIONS:	CC: Ron N. 9-22-97
CONTROLLED:	
PAYMENT AS:	
PAID:	

Dear Mr. Lechner,

The Department of the Army, U.S. Army Engineer District, Alaska, has forwarded to us a copy of your August 28, 1997 letter to Mr. Doug Wood in connection with services and/or material that Shoreside Petroleum's wholly-owned subsidiary, Marathon Fuel, allegedly provided to Spencer Rock Products, Inc. in connection with the above-referenced Project. We have responded directly to the Corps, but wanted to correct an erroneous allegation you had in your letter.

You allege that Spencer Rock is a subcontractor to Nugget. This is not correct. Spencer Rock Products has never been a subcontractor to Nugget on the Homer Spit project. Instead, Spencer served as a material supplier. This is conformed by the Agreement between Nugget and Spencer, a copy of which we provide for your consideration. Spencer was not required to perform any work on site. In fact, assuming its material met the requirements of the prime contract, Spencer's obligation terminated when it delivered the specified rock "F.O.B. Contractor Provided Barge Deck, Seward, Alaska." We believe that Spencer Rock Products is properly characterized as a "material supplier" on the Homer Spit Project, rather than a "subcontractor."

Moreover, to the best of our knowledge, even though this is a bonded project, Nugget Construction is not responsible to ensure that any supplier to a supplier is paid for work performed under the contract. Instead, as we understand it, the second-tier supplier must look solely to the first-tier supplier for payment.

As you may know, there is a dispute ongoing between Spencer Rock Products and Nugget concerning the amount, if any, due and owing to Spencer Rock Products. Nevertheless, we



September 19, 1998  
Mr. Doug Lechner  
Page 2

wanted to send you this letter to let you know that Nugget does not believe it or its bonding company is responsible to pay for any services and/or material you may have provided to Spencer in connection with the Homer Spit Project in light of the relationship between Spencer and Nugget.

I am sorry that our response could not be more favorable. However, I am sure you can understand why Nugget cannot volunteer to pay obligations of our suppliers to their suppliers when it is not required to.

Sincerely,  
Nugget Construction, Inc.



Greg Poynor  
General Manager

cc Oles Morrison and Rinker  
Thomas Johnson, P.E. USACE

EXHIBIT 1  
Page 109 of 116

Exhibit 1  
Page 6 of 6

RECEIVED

FEB 12 1999

OMR & B, Anch.

1 D.K. "Kirby" Wright, Jr., Esq.  
2 Hintze & Wright  
3 1901 One Union Square  
4 600 University Street  
5 Seattle, WA 98101-1129  
6 Telephone: (206) 587-0822  
7 Fax: (206) 587-0823

8 Attorneys for Defendants  
9 Spencer Rock Products, Inc.  
10 and Robert A. LaPore  
11

12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE DISTRICT OF ALASKA AT ANCHORAGE  
14

15 UNITED STATES OF AMERICA for )  
16 the use of NORTH STAR TERMINAL )  
17 & STEVEDORE COMPANY, d/b/a )  
18 NORTHERN STEVEDORING & HANDLING; )  
19 and NORTH STAR TERMINAL & )  
20 STEVEDORE COMPANY d/b/a NORTHERN )  
21 STEVEDORING & HANDLING on its )  
22 own behalf, )

23 Plaintiffs, )

24 vs. )

25 NUGGET CONSTRUCTION, INC.; )  
26 SPENCER ROCK PRODUCTS, INC.; )  
27 UNITED STATES FIDELITY AND )  
28 GUARANTY COMPANY; and ROBERT A. )  
29 LAPORE, )

30 Defendants. )  
31 )  
32 )

Ex. 5 Date 12-2-05  
Witness Lechner  
S. BUCK 907-258-7100

Case No. A98 009 CIV (HRH)

33 AFFIDAVIT OF ROBERT A. LAPORE  
34 SUPPORTING OPPOSITION TO SHORESIDE/MARATHON'S  
35 MOTION FOR SUMMARY JUDGMENT  
36

37 AFFIDAVIT OF ROBERT A. LAPORE - 1  
38 Lapore/Northstar/0047.0

EXHIBIT 1  
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Hintze & Wright  
Attorneys at Law  
600 University Street, Suite 1901  
Seattle, WA 98101  
(206) 587-0822 Telephone  
(206) 587-0823 Fax

1 STATE OF MINNESOTA )  
2 ) ss.  
3 COUNTY OF RAMSEY )  
4

5 I, Robert A. LaPore, being first duly sworn, depose and  
6 state:

7 1. I am over the age of eighteen, a citizen of the  
8 United States, and competent to testify to the matters stated  
9 herein.

10 I make this affidavit based upon personal knowledge.

11 2. I am the President of Spencer Rock Products, Inc.  
12 ("Spencer Rock"). I make this affidavit in support of the  
13 opposition to Shoreside/Marathon's motion for summary judgment.  
14

15 3. Spencer Rock ordered two railcars of fuel from  
16 Shoreside/Marathon for the Homer Spit project. The first was  
17 ordered and paid for. The second was ordered in April, 1997,  
18 and has not yet been paid for.  
19

20 4. Spencer Rock acknowledges that it owes  
21 Shoreside/Marathon for the railcar of fuel ordered in April,  
22 1997. I believe the amount owed to be approximately  
23 \$21,503.30.  
24

25 //

26 //  
27

28 AFFIDAVIT OF ROBERT A. LAPORE - 2  
LaPore/Northstar/8047.f

1 5. No other material was ordered by Spencer Rock.  
2  
3 Mr. Randy Randolph ordered all remaining railcars of fuel on  
4 behalf of Nugget Construction Co., Inc.

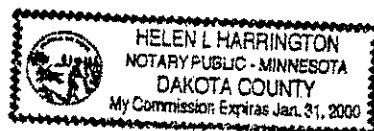
5 6. Once Nugget Construction Co., Inc. became involved in  
6 the pit through the support agreement, Spencer Rock had no  
7 control over Nugget, the ordering of the fuel, or the running  
8 of the pit whatsoever.  
9

10 FURTHER YOUR AFFIANT SAYETH NAUGHT

11 DATED this 10 day of February, 1999.  
12

13  
14 Robert A. LaPore  
15 ROBERT A. LAPORE  
16

17  
18 SUBSCRIBED and SWORN to before me this 10th day of  
19 FEBRUARY, 1999.  
20



24  
25  
26  
27  
28

Helen L. Harrington  
NOTARY PUBLIC in and for the  
State of Minnesota, residing  
at: RAMSEY COUNTY  
My Commission Expires: JAN 31, 2000

AFFIDAVIT OF ROBERT A. LAPORE - 3  
LaPore/Northstar/0047.;

CERTIFICATE OF SERVICE

This is to certify that a true copy  
of the foregoing was sent by Federal Express  
overnight delivery service this 11<sup>th</sup> day of  
February, 1999 to the following:

Mr. Michael W. Sewright  
Burr, Pease & Kurtz  
810 N Street  
Anchorage, AK 99501-3293

Mr. William K. Renno  
Mr. John Lukjanowicz  
Oles Morrison Rinker & Baker, LLP  
745 West Fourth Avenue, Suite 502  
Anchorage, AK 99501

Mr. Steven J. Shamburek  
Farleigh & Shamburek  
405 West 36th Avenue, Suite 210  
Anchorage, AK 99503-5872

Mr. George M. Kapolchok  
Attorney at Law  
1215 West 8th Avenue  
Anchorage, AK 99501

  
Yvonne Szezhner

Secretary to D.K. "Kirby" Wright, Jr.

EXHIBIT 1  
Page 113 of 116

AFFIDAVIT OF ROBERT A. LAPORE - 4  
Lapore/Northstar/0047.pld

Hintze & Wright  
Attorneys at Law  
600 University Street, Suite 1901  
Seattle, WA 98101  
(206) 587-0822 Telephone  
(206) 587-0823 Fax

Steven J. Shamburek  
Alaska Bar No. 8606063  
FARLEIGH & SHAMBUREK  
405 West 36<sup>th</sup> Avenue Suite 210  
Anchorage, Ak. 99503  
(907) 274-6641  
(907) 272-6875 FAX

Attorneys for Plaintiff  
Shoreside Petroleum, Inc.,  
d/b/a Marathon Fuel Service

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA for the  
Use of SHORESIDE PETROLEUM, INC.,  
d/b/a/ Marathon Fuel Service, on its own  
behalf,

Plaintiffs,

vs.

NUGGET CONSTRUCTION, INC.; SPENCER  
ROCK PRODUCTS, INC.; UNITED STATES  
FIDELITY AND GUARANTY COMPANY; and  
ROBERT A. LAPORE,

Defendants.

Case No. A98-009 CV (HRH)

Affidavit of Doug Lechner

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

)  
) ss.  
)

6  
Date 12-2-05  
Signature Lechner  
S. V. F. SIGN 507-254-7100

I, DOUG LECHNER, being first duly sworn, deposes and states as follows:

1. I am the Vice President of Marketing for Shoreside Petroleum, Inc., d/b/a  
Marathon Fuel Service.



2. During 1997 Spencer Rock Products, Inc., under the ownership of Robert A. LaPore, purchased a total of three rail tank cars of diesel fuel and other products from Shoreside Petroleum, Inc., d/b/a Marathon Fuel Service.
3. Robert A. LaPore called me personally and ordered all three of these rail tank car deliveries of diesel fuel over the phone at our office located at 604 Port Avenue, Seward, Ak.
4. Robert A. LaPore spoke directly to me on every occasion he ordered fuel.
5. The dates of the rail tank car purchases made by Robert A. LaPore are as follows:  
**Purchase #1:** February 4, 1997 invoice #123712 in the amount of \$ 24,028.73 (paid in full)  
**Purchase #2:** April 8, 1997 invoice #123738 in the amount of \$ 21,503.30 (not paid)  
**Purchase #3:** May 21, 1997 invoice #123746 in the amount of \$ 21,278.53 (not paid)
6. Immediately upon completion of each individual rail tank car billing, a copy of the invoice was faxed directly to Spencer Rock Product's office.
7. A statement which itemized all rail tank car deliveries of diesel fuel and any other items purchased were mailed every month to Spencer Rock Product's office.
8. Until the affidavit written by Robert A. LaPore on February 10, 1999, there has never been a phone call, correspondence, inquiry or dispute regarding any incorrect billing of the third rail car or any other item purchased from Shoreside Petroleum, Inc., d/b/a Marathon Fuel Service by Robert A. Lapore.

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9. One must certainly question why it would take any prudent small business person (especially one in financial trouble) almost two years to notice an invoice in the amount of \$ 21, 278.53 that was allegedly charged to their account by mistake!

FURTHER YOUR AFFIANT SAYETH NAUGHT.

  
Doug Lechner

SUBSCRIBED AND SWORN TO BEFORE ME THIS 18<sup>th</sup> day of February, 1999.

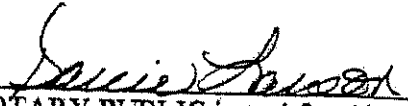
  
NOTARY PUBLIC in and for Alaska  
My Commission Expires: 12-18-2000

EXHIBIT 1  
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